

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOUIS ANDREW DIDONNA,

Plaintiff,

v.

HAROLD L. SMITH, *et al.*,

Defendants.

No. 22-CV-6107 (KMK)

ORDER

KENNETH M. KARAS, United States District Judge:

Plaintiff commenced this Action on July 18, 2022, pursuant to 42 U.S.C. § 1983, alleging violations of his constitutional rights. (*See* Compl. (Dkt. No. 2).) After Plaintiff filed an Amended Complaint, (Dkt. No. 7), the Court ordered service (Order (Dkt. No. 11)). Because Plaintiff sued several John and Jane Doe Defendants, the Court directed Plaintiff to file a second amended complaint within 30 days of receiving information identifying those Defendants. (*See id.* at 5–6.)

Despite discovering the identities of some of the Doe Defendants, Plaintiff did not file a second complaint. On September 20, 2023, the Court asked Plaintiff whether he sought leave to amend. (*See* Memo Endorsement (Dkt. No. 36).) On March 18, 2024, the Court received a letter from Plaintiff, (*see* Ltr. from Plaintiff to Court (Mar. 18, 2024) (Dkt. No. 37)), that the Court interpreted as a request for leave to amend, and gave Plaintiff until June 24, 2024, to file a second amended complaint against the newly identified Defendants, (*see* Memo Endorsement (Dkt. No. 41)). Despite warning Plaintiff that failure to meet the deadline would “result in dismissal of claims against any unserved Defendants for failure to prosecute,” no second amended complaint was filed. (*Id.*).

On July 19, 2024, the Court ordered Plaintiff to show cause within 30 days as to why this Action should not be dismissed for failure to prosecute. (Order (Dkt. No. 42).) On July 31, 2021, Plaintiff responded in the form of a letter informing the Court that “[he] was not able to write [the Court] sooner” “[b]ecause of the strict quarantine” at Lackawanna County Prison. (See Ltr. from Plaintiff to Court (Dkt. No. 43).) Plaintiff asked that his address be changed but did not address the Court’s July 2024 order to show cause.

Plaintiff has repeatedly failed to meet the Court’s deadlines, either in silence or by writing a letter to the Court that is timely but fails to address the deadline. Given the solicitude typically due to pro se litigants, the Court provides Plaintiff this last chance to file a second amended complaint. Accordingly, it is hereby:

ORDERED that the Plaintiff shall file, by no later than November 4, 2024, a second amended complaint naming the previously unidentified defendants. The second amended complaint will replace, not supplement, the original and amended complaints. If Plaintiff fails to meet this deadline, this Action may be dismissed for failure to prosecute. *See Murphy v. L.A. Spaulding et al.*, No. 20-CV-9013, 2020 WL 1063138 (S.D.N.Y. Mar. 30, 2022) (dismissing case brought by pro se plaintiff for failure to prosecute); *Armstrong v. Guiccione*, 470 F.3d 89, 103 n.1 (2d Cir. 2006) (noting that “a federal district court has the inherent power to dismiss a case *sua sponte* for failure to prosecute” (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–32 (1962))). The Clerk of Court is respectfully directed to mail a copy of this Order to Plaintiff.

SO ORDERED.

Dated: October 4, 2024
White Plains, New York



KENNETH M. KARAS
United States District Judge